IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.525 OF 2006
IN
L.C.SUIT NO.3198 OF 2006
WITH
CIVIL APPLICATION NO.662 OF 2006

AND

APPEAL FROM ORDER NO.526 OF 2006
IN
L.C. SUIT NO.3199 OF 2006
WITH
CIVIL APPLICATION NO.663 OF 2006

Laxman Barkya Wadkar & Ors. ...Appellants

Versus

Municipal Corporation of Gr.Mumbai ...Respondents

.....

Mr.R.A.Thorat for Appellants.

Mrs.Geeta Joglekar for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

JULY 26, 2006.

P.C.

1. Heard Counsel for the parties. Perused the relevant documents on record.

2. These Appeals from Order challenge the

Judgment and Order passed by the Trial Court dated 15th July 2006 refusing to grant ad-interim relief as prayed by the Appellants/Plaintiffs. The Court below relying on the decision in the case of **Bales Sardara Paracha vs. Municipal Corporation of Gr. Bombay reported in 2005 (3) All MR 218**, has noted that it was not open to the Court to grant any relief, as the Suit was against proposed action of the Authority in terms of Section 55 of the Maharashtra Regional And Town Planning Act, 1966 (hereinafter referred to as 'the MRTP Act').

3. Before this Court, it is contended that the proposed action under Section 55 of the MRTP Act, is abuse of process. Inasmuch as in the past, notices issued by the Authority under the provisions of Corporation Act have been held to be inappropriate action. It is also contended that the proposed action of the Corporation suffers from due process of law.

4. After having considered the rival submissions, I have no hesitation in upholding the order passed by the lower Court refusing to grant

ad-interim relief in favour of the Appellants. This is so, because the structures in question are noted to be temporary structures erected by the Appellants/Plaintiffs without prior permission. In such a case, action under Section 55 of the MRTP Act cannot be said to be unfounded. Section 55 of the MRTP Act reads thus:

> **'55. Removal or discontinuance of unauthorised temporary development summarily.**-(1) Notwithstanding any**thing** hereinbefore contained in this Chapter, where any person has carried out any development of a temporary nature unauthorisedly as indicated in sub-section (1) of section 52, the Planning authority may by an order in writing direct that person to remove any structure or work erected, or discontinue the use of land made unauthorisedly as aforesaid, within fifteen days of the receipt of the order; and if thereafter, the person does not comply with the order within the said period, the Planning Authority may request the District Magistrate or the Commissioner of Police, as the case may be, [or authorise any of its officers or servants,] to have such work summarily removed or such use summarily discontinued without any notice as directed in the order, and any development unauthorisedly made again, shall be similarly removed or discontinued summarily without making any order as aforesaid."

5. The first part clearly authorises the

Planning Authority to take action in respect of temporary nature unauthorised structures. In the present case, the Authority in the suit notice dated 20th June 2006 has stated that the structures in question are of temporary nature and unauthorised. If it is so, Section 55 of the MRTP Act was plainly available to the Planning Authority to proceed in respect of the said structures. It is not the case of the Appellants that the said structures have been erected after taking prior permission of the competent Authority. It is also not the case of the Appellants/Plaintiffs that the suit structures are in existence prior to the datum line i.e. 1st April 1962. If it is so, the structures cannot be tolerated as they are not the protected structures as per the extant policy of the Government.

6. No fault can be found with the approach of the Authority in proceeding against the suit structures. The action of the Authority is obviously after complying due process of law. Counsel for the Appellants, however, contended that earlier, the Authority issued notice under Section

342 of the Mumbai Municipal Corporation Act which was challenged and the matter was brought before this Court by way of Appeal from Order. This Court in its order dated 8th June 2006 opined that action in respect of the suit structures under Section 342 was unavailable. It is submitted that the Authority instead of resorting to appropriate provision under the Mumbai Municipal Corporation Act, as per the liberty granted in the said order, has now resorted to action under Section 55 of the MRTP Act, for which reason, it cannot be permitted. It is not possible to accept this submission. From the provisions of Section 55 of the MRTP Act as has been held earlier, the Planning Authority is competent to proceed against the suit structures. There is nothing in the decision of this Court dated 8th June 2006 which disentitles the Planning Authority to take recourse to that provision. It is well settled that no injunction can be issued against the Authority to refrain from taking action as per the provisions of law. If the Planning Authority has resorted to power under Section 55 of the MRTP Act, which is otherwise available in law, no fault can be found with the said approach of the

Planning Authority.

7. Taking any view of the matter, in my opinion, no prima facie case has been made out by the Appellants, that would entitle the Appellants for grant of ad-interim relief. Hence, these Appeals fail. The same are dismissed.

8. In view of the above order, accompanying Civil Applications also stand disposed of.

A.M.KHANWILKAR, J.